Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE CORPORATION,	)	
	)	
Transferor,	)	
	)	
and	)	CC Docket No. 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer of Control	)	

REPLY COMMENTS OF NEXTLINK COMMUNICATIONS, INC.

Pursuant to Public Notice DA 00-165 issued by the Federal Communications Commission (the "Commission") on January 31, 2000,[1] NEXTLINK Communications, Inc. ("NEXTLINK") hereby submits its reply comments in opposition to the Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") (referred to collectively as "Applicants") Supplemental Filing, which includes, among other items, Bell Atlantic's and GTE's proposed merger conditions, in the above-captioned docket.[2]

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[1] Public Notice, Commission Seeks Comment on Supplemental Filing Submitted by Bell Atlantic Corporation and GTE Corporation, CC Docket No. 98-184, DA 00-165 (rel Jan. 31, 2000).

[2] *See GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer of Control*, CC Docket No. 98-184, Supplemental Filing of Bell Atlantic and

I. INTRODUCTION AND SUMMARY

Under Section 310(d) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), Bell Atlantic and GTE are required to demonstrate that their proposed merger serves the public interest[3] – *i.e.*, will lead to enhanced competition.[4] For the reasons detailed below, and as supported by the vast majority of commenting parties in this proceeding, NEXTLINK finds the Applicants' Supplemental Filing to be wholly insufficient and unpersuasive to support the proposed merger.[5] The merger will result in serious anti-competitive harms and offers no public interest benefits. Further, the conditions proposed by Bell Atlantic and GTE do not provide adequate safeguards to prevent or compensate for the anti-competitive and public interest harms that would result from the merger.

If the Commission approves the merger, it must impose strict merger conditions that offset the significant competitive harms and create the necessary public interest benefits. At a minimum, these conditions should include all of the merger conditions imposed on SBC and Ameritech. Further, the Commission should recognize that the SBC-Ameritech merger conditions have been less than perfect, and thus, the Commission should modify those conditions

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GTE (filed Jan. 27, 2000) ("Supplemental Filing").

[3] 47 U.S.C. § 310(d).

[4] *See In the Applications of NYNEX Corp. and Bell Atlantic Corp*., 12 FCC Rcd. 19985, ¶¶ 2-3 (1997) ("*BA-NYNEX Merger Order*"); *see also In re Applications of Ameritech Corp. and SBC Communications, Inc.*, CC Docket No. 98-141, ¶ 49 (Oct. 8, 1999) ("*SBC-Ameritech Merger Order*").

[5] NEXTLINK notes that the Applicants have failed to demonstrate that their merger complies with Section 271 of the Act. NEXTLINK addressed the Section 271 issue in its Comments filed on February 15, 2000, in response to the DataCo "spin-off" proposal, and incorporates by reference those previous Comments. *See* NEXTLINK Comments, CC Docket No. 98-184 (filed Feb. 15, 2000).

to impose on the instant merger stricter, more effective merger requirements and enforcement mechanisms.

II. THE PROPOSED MERGER WOULD RESULT IN ANTI-COMPETITIVE HARMS AND HAS NO PUBLIC INTEREST BENEFITS

A. The Merged Entity Would Have Greater Opportunity to Engage in Anti-Competitive and Discriminatory Behavior

The merger of Bell Atlantic and GTE would result in serious anti-competitive effects and would produce no public interest benefits. The merged Bell Atlantic-GTE entity would control 58 million switched access lines – over one-third of the switched access lines in the country.[6] With such a large footprint, the merged entity would have greater incentive and ability to engage in discriminatory and anti-competitive conduct in a manner that would further hamper the growth of competition in local exchange markets.

For example, as the Indiana Utility Regulatory Commission ("IURC") explains in its comments, GTE faces almost no competition for local telephone service in its regions in Indiana.[7] The IURC presents in its comments a lengthy list of anti-competitive actions and delay tactics employed by GTE in Indiana.[8] If the Commission approves the merger without imposing adequate merger conditions and competitive safeguards, the Commission should expect GTE to continue to engage in such anti-competitive behavior.

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6 *See, e.g.*, Comments of CoreComm, Inc. at 10 (filed March 1, 2000).

7 *See* IURC Comments at 4-5 (filed March 1, 2000) (GTE has lost only 6,868 total lines in Indiana. Of those total lost lines, GTE has lost only 468 lines as unbundled network elements ("UNEs") – only 0.047% of GTE's total lines in Indiana.).

8 *Id.* at 6-9 (The IURC outlines various anti-competitive behaviors engaged in by GTE, including, but not limited to: GTE's attempts to impose interim universal service surcharges in interconnection agreements; GTE's attempts to restrict resale in a manner that is not in the public interest; and GTE's imposition of language in interconnection agreements that permits GTE to

Further, the merged entity would raise barriers to local competition by offering immediately to a high percentage of large business customers facilities-based local service.[9] Competitive local exchange carriers ("CLECs") would be unable to provide similar service without the expensive exercise of first building out their networks.[10]

B. The Merger Would Eliminate Potential Competitive Entry by the Applicants

The proposed Bell Atlantic and GTE merger would reduce the number of competitive entrants in ILEC regions. Throughout this proceeding, commenting parties have stressed the fact that both Bell Atlantic and GTE would, absent the merger, enter the other's territories to provide local service.[11] The merger would remove each of the Applicants as a significant potential entrant and competitor in the other's local service territory.

Further, Bell Atlantic's and GTE's efficiency claims are overstated. Indeed, the merger is wholly unnecessary, because Bell Atlantic and GTE have the experience, expertise and financial ability as individual companies to compete effectively in the provision of local exchange, long distance and Internet services on a nationwide basis.[12] Rather than engage in real competitive efforts, Bell Atlantic and GTE have decided to merge. Only strict merger conditions, with meaningful enforcement provisions and penalties for noncompliance, could offset the anti-competitive harms that would result from the merger.

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make unilateral changes to such agreements and possibly to collect retroactive compensation.).

[9] *See* MCI WorldCom Comments at 4 (filed March 1, 2000); *see also* AT&T Comments at 7 (filed March 1, 2000).

[10] *See* MCI WorldCom Comments at 3-4; *see also* AT&T Comments at 6-7.

[11] *See, e.g.,* AT&T Comments at 21-22; *see also* MCI WorldCom Comments at 3-4.

[12] *See* AT&T Comments at 21-22; *see also* MCI WorldCom Comments at 3-4.

C. The Merger Would Reduce the Number of Competitive Benchmarks Available for Regulatory Comparison Purposes

The merger would diminish the Commission's ability to effectively utilize an important regulatory tool – benchmarking. In its *SBC-Ameritech Order*, the Commission noted that the major ILECs, including GTE, serve as "valuable benchmarks for assessing each other's performance."[13] The proposed merger would further reduce the number of ILECs for the Commission and state commissions to compare for benchmarking purposes. Accordingly, the Commission and state commissions would have greater difficulty assessing the state of competition in local service markets and comparing ILEC service offerings for the purpose of instituting pro-competitive and market-opening requirements.[14]

The loss of GTE as a competitive benchmark would be significant. The Commission must not allow the merger of Bell Atlantic and GTE to result in a situation in which the merged entity can elect to adopt the more anti-competitive behaviors and delay tactics of either GTE or Bell Atlantic. As discussed below, if the Commission hopes to compensate for the loss of GTE as a significant ILEC for benchmarking purposes, it must impose merger conditions that foster the adoption of "best practices."

III. ONLY STRINGENT MERGER CONDITIONS CAN COMPENSATE FOR THE ABOVE-LISTED HARMS

The merger conditions proposed by Bell Atlantic and GTE are insufficient to protect the anti-competitive harms that would result from the merger of the two ILECs. For example, Bell

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13 *See* SBC-Ameritech Merger Order ¶ 103.

14 See AT&T Comments at 10-15; *see also* MCI WorldCom Comments at 5-6; *see also* CoreComm Comments at 12-15.

Atlantic and GTE fail to include in their proposal all of the conditions imposed on SBC and Ameritech.[15] As noted above, the merger would result in a mega-ILEC that controls one-third of the country's access lines.[16] The merger of Bell Atlantic and GTE would result in similar and equally detrimental anti-competitive and public interest harms that were present in the merger of SBC and Ameritech. Accordingly, if the Commission decides to approve the merger of Bell Atlantic and GTE, the conditions imposed on the merger should be as stringent as – and in some instances more stringent than – those imposed in the merger of SBC and Ameritech.

Overstated claims of synergies and public benefits from Bell Atlantic are not a new phenomenon. When Bell Atlantic and NYNEX announced their plans to merge, they filed a list of great expectations that would be realized following consummation of their merger. Bell Atlantic and NYNEX claimed that their merger would lead to tremendous efficiencies and synergies, resulting in great public benefits.[17] In the recent Supplemental Filing, Bell Atlantic and GTE tout nearly identical claims. In urging the Commission to approve the merger, Bell Atlantic and GTE contend that their merger will "produce enormous public benefits."[18] Further,

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[15] *See* AT&T Comments at 26-30 (stating that the proposed out-of-region market entry conditions are in significant and criticizing the proposed performance measures for being fixed and inalterable); *see also* MCI WorldCom Comments at 6-7; *see also* NorthPoint Comments at 1-4 (filed March 1, 2000).

[16] *See supra* n. 6. The merged entity would control approximately the same percentage of access lines as controlled by SBC-Ameritech.

[17] *See In re Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries,* Memorandum Opinion and Order, 12 F.C.C.R. 19985, ¶¶ 37-156 (1997) (discounting Bell Atlantic's and NYNEX's public benefit and efficiency claims and imposing multiple conditions on the Bell Atlantic-NYNEX merger to protect competition and the public interest).

[18] *See* Supplemental Filing at 3-11.

Bell Atlantic and GTE highlight alleged cost savings and operating efficiencies that will stem from the merger.[19] As several parties explain in their comments, however, Bell Atlantic has consistently failed to comply with the conditions imposed on its merger with NYNEX.[20] The Bell Atlantic and NYNEX merger has produced no synergies or efficiencies that benefit the public interest. To the contrary, since its merger with NYNEX, Bell Atlantic has experienced a steady decline in its performance and service quality.[21]

Based on the proposed conditions contained in the Supplemental Filing, Bell Atlantic appears to ignore the realities of its own operations and practices. Since merging with NYNEX, for example, Bell Atlantic has struggled to comply with the conditions imposed on that merger.[22] In fact, Bell Atlantic's own data submission reveals that since the Bell Atlantic-NYNEX merger the quality of service provisioning to facilities-based CLECs such as NEXTLINK has declined dramatically.[23] Moreover, the Commission recently punished Bell Atlantic for failing to meet its obligations with respect to processing competitor's orders for unbundled network elements

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19 *Id*.

20 *See, e.g.*, MCI Comments at 2, 7; *see also* AT&T Comments at 23-24.

21 *See., e.g.,* Comments of NEXTLINK Communications, Inc. and Cablevision Lightpath, Inc., *In the Matter of Bell Atlantic's Progress Report on Compliance with Bell Atlantic/NYNEX Merger Order Conditions*, File No. AAD 98-24, DA 99-296 (filed March 8, 1999) (detailing, in part, the many difficulties NEXTLINK faced while trying to obtain merger condition compliance from Bell Atlantic in Pennsylvania).

22 *See* AT&T Comments at 23-25 (citing Bell Atlantic's failure to determine prices for access to network elements using forward-looking, economic costs).

23 *See* Performance Monitoring Reports appended hereto as Attachment A.

("UNEs").[24] In just two short months following its receipt of Section 271 long distance authority in New York, Bell Atlantic appears to have engaged in a campaign of, at a minimum, strategic incompetence in an effort to destroy competition.

Given the fact that Bell Atlantic has a proven history of overstating the public interest benefits in its mergers, and because Bell Atlantic has previously demonstrated – and, indeed, continues to demonstrate, its inability to comply with merger conditions, the Commission should be wary of Bell Atlantic's current promises. All of these concerns should lead the Commission to the conclusion that Bell Atlantic and GTE must be subject to strict merger conditions, if the Commission wants to preserve any hopes that competition will grow in the Bell Atlantic and GTE local service markets. The Commission should not impose on the Bell Atlantic and GTE merger lesser conditions than those imposed on SBC and Ameritech. Furthermore, the Commission should use this opportunity to reexamine the merger conditions imposed on SBC-Ameritech. Many of those conditions have been less than successful.[25] In order to avoid repeating the same mistakes that lead to anti-competitive behaviors, and as discussed in more detail below, the Commission should strengthen several of the SBC-Ameritech merger conditions.

Strict merger conditions are necessary; however, strict conditions alone are not effective to deter anti-competitive conduct and to ensure that competition continues to grow in the local service markets. The Commission should require Bell Atlantic and GTE to submit a detailed

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[24] *See In the Matter of Bell Atlantic-New York Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Acct. No. X32080004, FCC 00-92, Order and Consent Decree (rel. March 9, 2000).

[25] *See, e.g.*, NorthPoint Comments at 1-4.

compliance plan prior to merger approval. In addition, the Commission should impose rigorous performance measures and reporting requirements on the merged entity. Such measures and reporting requirements will enable the Commission to track Bell Atlantic-GTE's success in complying with the merger conditions and other pro-competitive obligations.

Further, the Commission must ensure that strict merger conditions, performance measures and reporting requirements are reinforced by strong and swift enforcement mechanisms to ensure that Bell Atlantic and GTE live up to the commitments.[26] The enforcement mechanisms and compliance plans should include significant, self-enforcing penalties that pose a real threat to Bell Atlantic and GTE should they fail to meet their obligations. Small fines, lengthy enforcement proceedings with no actual consequences and other insignificant conditions will be viewed by Bell Atlantic and GTE as the simple cost of protecting their markets and hampering competition.

IV. THE COMMISSION SHOULD IMPOSE ALL OF, AND STRENGTHEN, THE CONDITIONS APPLIED IN THE SBC-AMERITECH MERGER

As the Commission is well aware, GTE has not been required to meet to the threshold obligations of Section 271 of the Act.[27] For example, GTE has generally has not been held to the same state performance measures and enforcement remedies as the RBOCs. As such, GTE has been able to compete in the long distance market without showing that its own local markets are open to competition. Despite not being subject to Section 271, GTE, however, is obligated to

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[26] *See* MCI WorldCom Comments at 19-20; *see also* NorthPoint Comments at 10-11.

[27] *See, e.g.*, CoreComm Comments at 39.

comply with the strenuous market-opening provisions of Section 251 of the Act. As demonstrated in the instant comments, and as described by many other commenting parties, GTE has continued to fight its pro-competitive obligations under the Act and engage in delay tactics and anti-competitive behavior.[28] Thus, in addition to ensuring that all of the merger conditions from the SBC-Ameritech merger apply to Bell Atlantic and GTE, the Commission should ensure that GTE is not able to take advantage of the increased size and scope that would result from its merger with Bell Atlantic in an effort to further preclude meaningful competition in its markets. At a minimum, GTE should be subject to all requirements and merger conditions imposed on Bell Atlantic. Further, the Commission should require GTE to be subject to any Section 271 requirement imposed by the states and/or the Commission. Application of the obligations under Section 271 to GTE as a condition of approving the merger would provide the Commission and state commissions with an opportunity to determine the prospects for local competition in GTE's markets. Approval of the merger without such a condition would permit GTE to perpetuate its current local monopoly indefinitely.

NEXTLINK believes that, because the Bell Atlantic-GTE merger presents similar harms that were present in the SBC-Ameritech merger, the Commission should impose all of the SBC-Ameritech conditions on Bell Atlantic-GTE. Further, because many of the SBC-Ameritech conditions have failed to achieve the desired pro-competitive results, NEXTLINK encourages the Commission to modify several of those conditions. The following merger conditions deserve special consideration by the Commission.

A. Most-Favored Nation Provision

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[28] *See* IURC Comments (detailing numerous examples of anti-competitive and noncomplying behavior by GTE).

With respect to imposing a most-favored nation condition on Bell Atlantic-GTE, the Commission should reject the condition as proposed by Bell Atlantic and GTE in their Supplemental Filing. Instead, the Commission should impose a most-favored nation condition that ensures CLECs have the right to obtain in any Bell Atlantic-GTE state any term or condition in any interconnection agreement to which a Bell Atlantic-GTE ILEC is a party.[29] Further, the most-favored nation conditions should extend to all interconnection agreements, whether voluntarily negotiated, arbitrated or arrived at by any other means.[30] Such a condition should also require Bell Atlantic and GTE to make available to any requesting CLEC any interconnection agreement entered into between the ILEC and any affiliated entity.[31]

The most-favored nation provision imposed in the SBC-Ameritech merger has been unsuccessful and has led to post-merger anti-competitive posturing by SBC-Ameritech. For example, SBC has consistently refused to permit CLECs to exercise their rights under the most-favored nation condition, usually asserting the unreasonable interpretation that the most-favored nation provision is too narrow to include whatever provision the CLEC would like to incorporate.[32] Further, faced with a requirement that permits CLECs to obtain only voluntarily

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[29] *See* AT&T Comments at 30-33; *see also* MCI WorldCom Comments at 13-14; *see also* NorthPoint Comments at 11-12; *see also* IURC Comments at 15-16; *see also* CompTel Comments at 8-9 (filed March 1, 2000).

[30] *See supra* n.28.

[31] *See, e.g.*, NorthPoint at 10-11.

[32] *See* AT&T Comments at 31-32; *see also* Interconnection Agreement-Texas between Southwestern Bell Telephone Company and CLEC ("Texas T2A Interconnection Agreement"), Attachment 26, which restricts a CLEC's ability to exercise its adoption rights under Section 252(i) of the Act by requiring a CLEC that wants to take advantage of the most-favored nation provision to adopt "legitimately related" provisions as determined and set forth by SBC – many

negotiated items, SBC avoids complying with the condition by approaching negotiations with a hard-line attitude that it will voluntarily agree to very little.[33]

In addition, Bell Atlantic and GTE should be required to publish on publicly available web sites all effective Bell Atlantic and GTE interconnection agreements and amendments within thirty days following the merger closing date.

Accordingly, the Commission should adopt a broad most-favored nation condition in the Bell Atlantic-GTE merger to ensure that Bell Atlantic and GTE are not provided with any incentive to act in an anti-competitive manner with respect to interconnection agreements.

B. Additional Performance Measurements Necessary

Any performance plan imposed by the Commission should include more measurements than proposed by Bell Atlantic and GTE. For example, in their Supplemental Filing proposal, Bell Atlantic and GTE include only 41 of the 170 sub-metrics adopted in New York.[34] In addition, the Commission should require Bell Atlantic-GTE to submit a detailed performance plan prior to approval of the merger. The performance plan should include measures that apply equally in every Bell Atlantic-GTE state. Further, the performance measures should be covered under the above-referenced most-favored nation condition. CLECs should be allowed to take advantage of any performance measures and standards the merged Bell Atlantic-GTE entity

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provisions of which are not related and should not be inextricably linked.

[33] *See* AT&T Comments at 31-32.

[34] *Id*. at 33-37.

offers to any affiliates.[35]

Moreover, the performance plan should include reporting requirements and audit sessions. In order to ensure Bell Atlantic-GTE's compliance with a performance plan condition, the Commission should dedicate staff to actively monitor Bell Atlantic-GTE's performance.[36] The performance plan should also include substantial, self-enforcing penalties for Bell Atlantic-GTE's failing to comply with its requirements. If Bell Atlantic and GTE are not subject to significant enforcement penalties, they will continue to provide substandard service to CLECs and to engage in anti-competitive behavior.

C. Uniform OSS throughout the Bell Atlantic-GTE Region

Bell Atlantic and GTE should be required to develop, implement and maintain uniform electronic operations support systems ("OSS") interfaces and business rules. The OSS should be uniform throughout the combined Bell Atlantic and GTE region – i.e., the same between and within each Bell Atlantic or GTE state.[37] In order to ensure compliance with such a uniform OSS requirement, the Commission should establish a clear timeframe in which such uniform OSS development must begin and be completed.

In addition, although GTE has not been subject to Section 271, and thus has not been required to participate in third-party testing of its OSS, as a merger condition, the Commission should require GTE to be subject to such third-party testing. In the end, if the Commission

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35 *See* NorthPoint Comments at 11-12.

36 *See* MCI WorldCom Comments at 19-20.

37 *See* MCI WorldCom Comments at 10-13; *see also* NorthPoint Comments at 10; *see also* RCN Telecom Comments at 2 (filed March 1, 2000); *see also* CoreComm Comments at 34-36.

requires Bell Atlantic-GTE to implement truly uniform OSS throughout the Bell Atlantic-GTE region, such third-party testing will obviously occur.

Moreover, in connection with the uniform OSS timeframe it sets out, the Commission should establish a compliance program under which Bell Atlantic and GTE would be subject to severe penalties for failure to comply with the imposed deadlines and requirements. If an arbitrator is selected to oversee compliance with the OSS implementation schedule, the Commission should ensure that the arbitrator has authority to issue injunctive relief and levy substantial penalties against Bell Atlantic-GTE for failure to comply with the OSS implementation schedule.[38]

D. Best Practices

In order to protect the public interest and to promote competitive entry by CLECs in the Bell Atlantic-GTE region, the Commission should impose a merger condition that requires Bell Atlantic and GTE to affirmatively identify and adopt the "best practices" of either ILEC on a region-wide basis. As noted, because the merged entity would possess such a large footprint, the potential for anti-competitive harm is tremendous. The Commission should not permit Bell Atlantic and GTE to select as a business practice for the merged entity the more anti-competitive practices of either ILEC.

E. Collocation and Interconnection Issues

Following the issuance of its recent orders addressing advanced telecommunications

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[38] *See* MCI WorldCom Comments at 12-13.

services and ILEC obligations with respect to collocations and UNEs,[39] the Commission should ensure that Bell Atlantic and GTE offer collocation to CLECs in compliance with all Commission rules, including any future rules. Furthermore, the Commission should require Bell Atlantic and GTE to submit an approved compliance plan prior to approval of the merger. As CoreComm notes in its comments, an independent auditor should approve the compliance plan before the merger is approved to ensure than Bell Atlantic and GTE will meet the *UNE Remand Order* and *Line Sharing Order* requirements.[40] Any pricing set forth by Bell Atlantic-GTE in establishing or meeting such a compliance plan can be subject to true-up.[41]

As the Commission issues future orders regarding interconnection or unbundling obligations, Bell Atlantic should be required to begin implementation activities within ten calendar days of the date such an order is released.[42] Further, Bell Atlantic-GTE should be required to post on publicly available web sites all related template interconnection agreements amendments no later than thirty days after the date such an order is released.[43] Moreover, when

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39 *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, Third Report and Order and Fourth Further Notice of Proposed Rulemaking ¶ 174 ("*UNE Remand Order*") (rel. Nov. 5, 1999); *see also In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, FCC 99-355, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 ("*Line Sharing Order*") (rel. Dec. 9, 1999)

40 *See* CoreComm Comments at 42-45.

41 *Id*.

42 *See* CoreComm Comments at 45-46.

43 *Id.*

such an order is released, Bell Atlantic-GTE should be required to file cost studies with the appropriate state commission within ninety days of the order release date – unless the state commission requires an earlier cost study filing deadline.[44]

Finally, with respect to the Section 252(i) interconnection adoption process, the Commission should require Bell Atlantic-GTE to present such adoption agreements to CLECs within ten business days of receiving the CLEC's request to adopt an interconnection agreement.[45]

F. Pricing Issues

As several parties note in their comments, GTE has engaged in a pattern of delay tactic behavior with respect to implementing its obligations and establishing appropriate pricing. The IURC explains in its comments that GTE unnecessarily delayed implementation of its wholesale tariff for a number of months.[46] In its comments, CoreComm points out that neither Bell Atlantic's nor GTE's *UNE Remand Order* compliance template includes rates for the UNEs that become effective on May 17, 2000.[47] Further, as CoreComm notes, Bell Atlantic's UNE Remand compliance template does not include pricing for the UNEs that became effective on February 17, 2000.[48]

NEXTLINK's experience with GTE with respect to obtaining forward-looking, cost-

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44 *Id*.

45 CoreComm Comments at 48-50.

46 IURC Comments at 9.

47 CoreComm Comments at 43-45.

based UNE pricing has produced similarly frustrating results. For example, under its interconnection agreement with GTE in California, NEXTLINK has no DS1 rate. NEXTLINK has asked repeatedly for a forward-looking, cost-based DS1 rate from GTE; however, GTE has not provided such a rate. Rather, GTE requires NEXTLINK to purchase DS1s from the GTE retail tariff at the exorbitantly high retail rate. GTE has filed cost studies with the California Public Utility Commission ("CPUC") allegedly designed to address the UNE rate issues. The CPUC has dismissed GTE's cost studies each time, declaring the cost studies to be woefully inadequate. Subsequently, GTE has elected to delay the pricing issues by refusing to file new cost studies that comply with the long-run incremental costing principles adopted by the CPUC. Such dilatory practices and acts of strategic incompetence by GTE have caused significant harm to CLECs, competition and consumers.

Another example of GTE's unreasonable practices and anti-competitive behavior with regard to pricing services is evidenced by the manner in which GTE provides extended loops to NEXTLINK and other CLECs in California. This anti-competitive behavior by GTE is further highlighted by comparing it to Pacific Bell's practices for the same service. Where a NEXTLINK customer terminates in an ILEC central office ("CO") in which NEXTLINK is not collocated, NEXTLINK must connect the customer from that terminating CO to the CO where NEXTLINK is collocated. In such a situation, Pacific Bell charges NEXTLINK a flat monthly recurring charge for the loop, a recurring cross-connect charge to the customer in the terminating CO, and mileage-based interoffice transport charges to connect to the CO where NEXTLINK is collocated. GTE, on the other hand, imposes additional, unreasonable charges for provisioning the same service. Like Pacific Bell, GTE charges NEXTLINK a monthly recurring charge for the

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[48] *Id.*

customer loop, a cross-connect charge, and a mileage-based charge to connect to the CO where NEXTLINK is collocated. In addition, GTE charges NEXTLINK inappropriate monthly recurring charges.

The Commission must ensure that Bell Atlantic and GTE are not permitted to delay further the pricing of required UNEs and other services mandated by the Commission in the *UNE Remand Order* and *Line Sharing Order*. Further, as part of a "best practices" analysis and implementation, Bell Atlantic and GTE should not be permitted to impose unnecessary and unreasonable charges for provisioning services like the above-referenced extended loop issue. As a precondition to merger approval, the Commission should require Bell Atlantic and GTE to submit interim prices and cost studies to the appropriate state commissions for the UNEs under the *UNE Remand Order* and *Line Sharing Order*. Further, Bell Atlantic and GTE would be required to ask the state commissions to open generic cost dockets to examine the submitted cost studies. The interim prices would be subject to true-up pending the result of the state cost study dockets.

V. CONCLUSION

The proposed merger between Bell Atlantic and GTE would result in anti-competitive harms and presents no public interest benefits. If the Commission approves the merger, it must impose strict conditions to compensate for such harms. The merger conditions should be as strict as the conditions imposed on the SBC-Ameritech merger. Further, the Commission should modify several of the SBC-Ameritech conditions in order to resolve remaining anti-competitive harms and incentives inherent in the conditions. Moreover, the Commission should require Bell Atlantic and GTE to submit and be subject to a rigorous compliance plan, complete with performance measures, reporting requirements and meaningful enforcement mechanisms and penalties.

Respectfully submitted,

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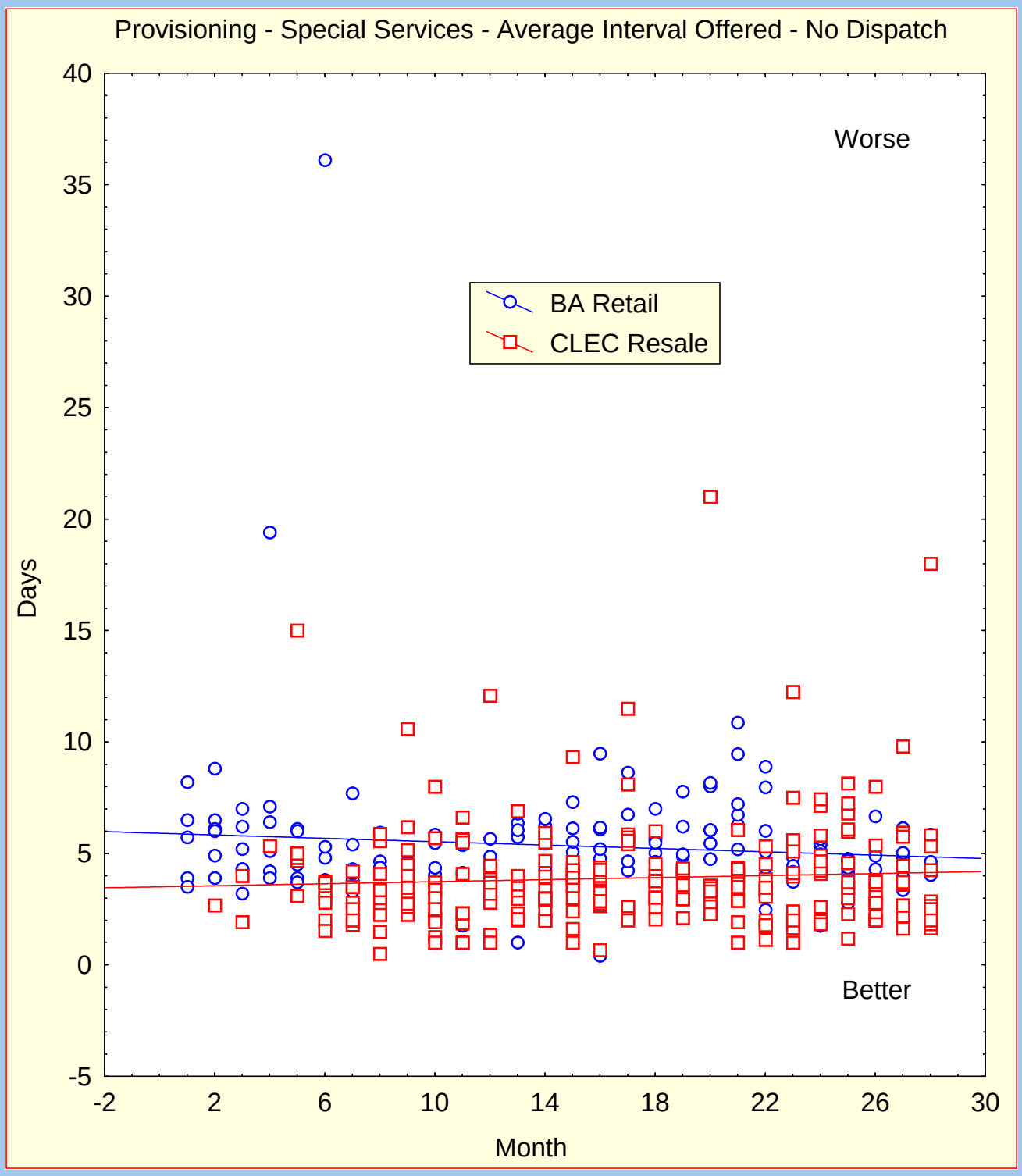
Dated: March 16, 2000

ATTACHMENT A

Bell Atlantic Performance Monitoring Reports

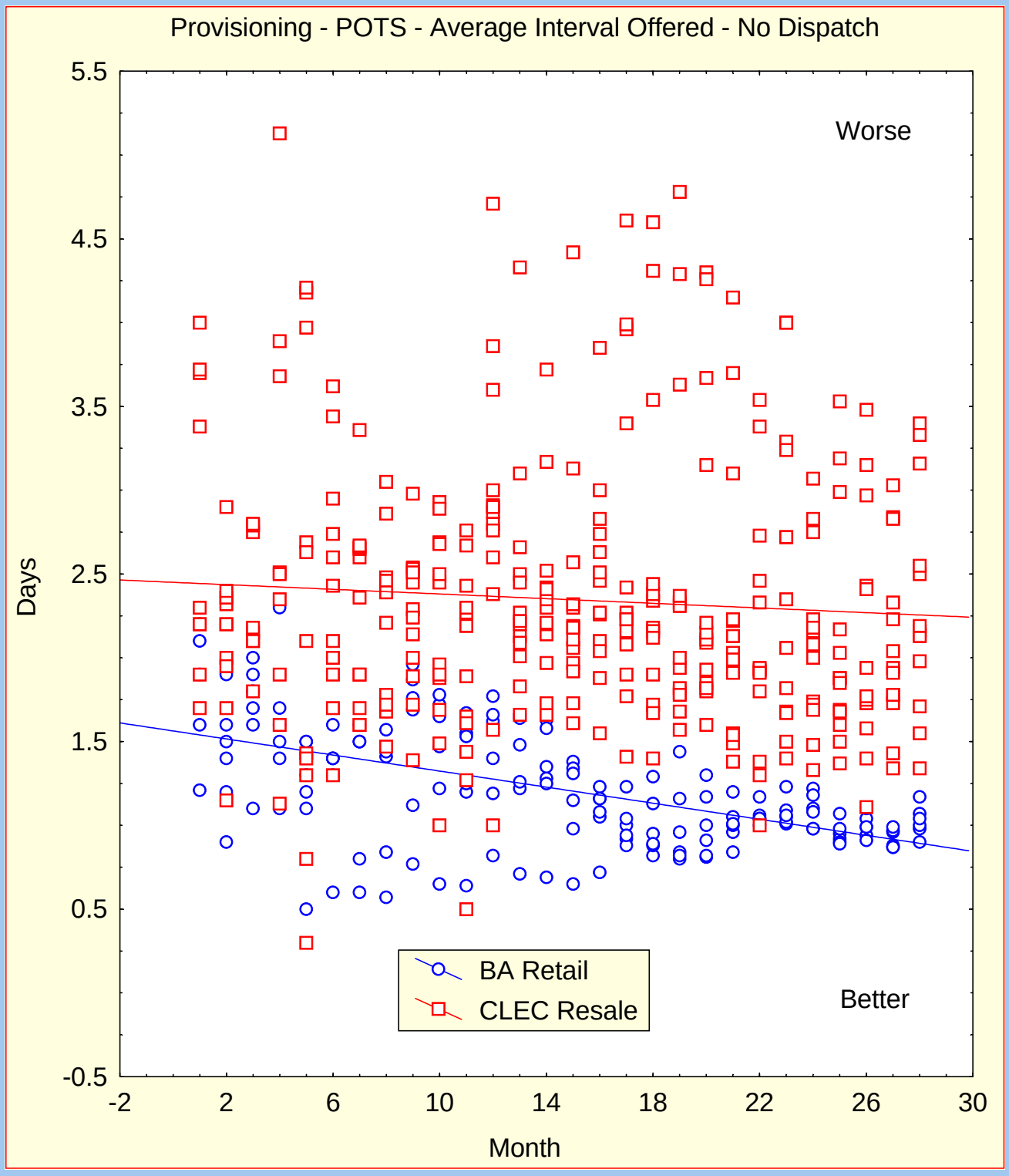
28 months (9/97 through 12/99) for 14 states



Public data from BA/NYNEX Merger filings

Bell Atlantic Performance Monitoring Reports

28 months (9/97 through 12/99) for 14 states



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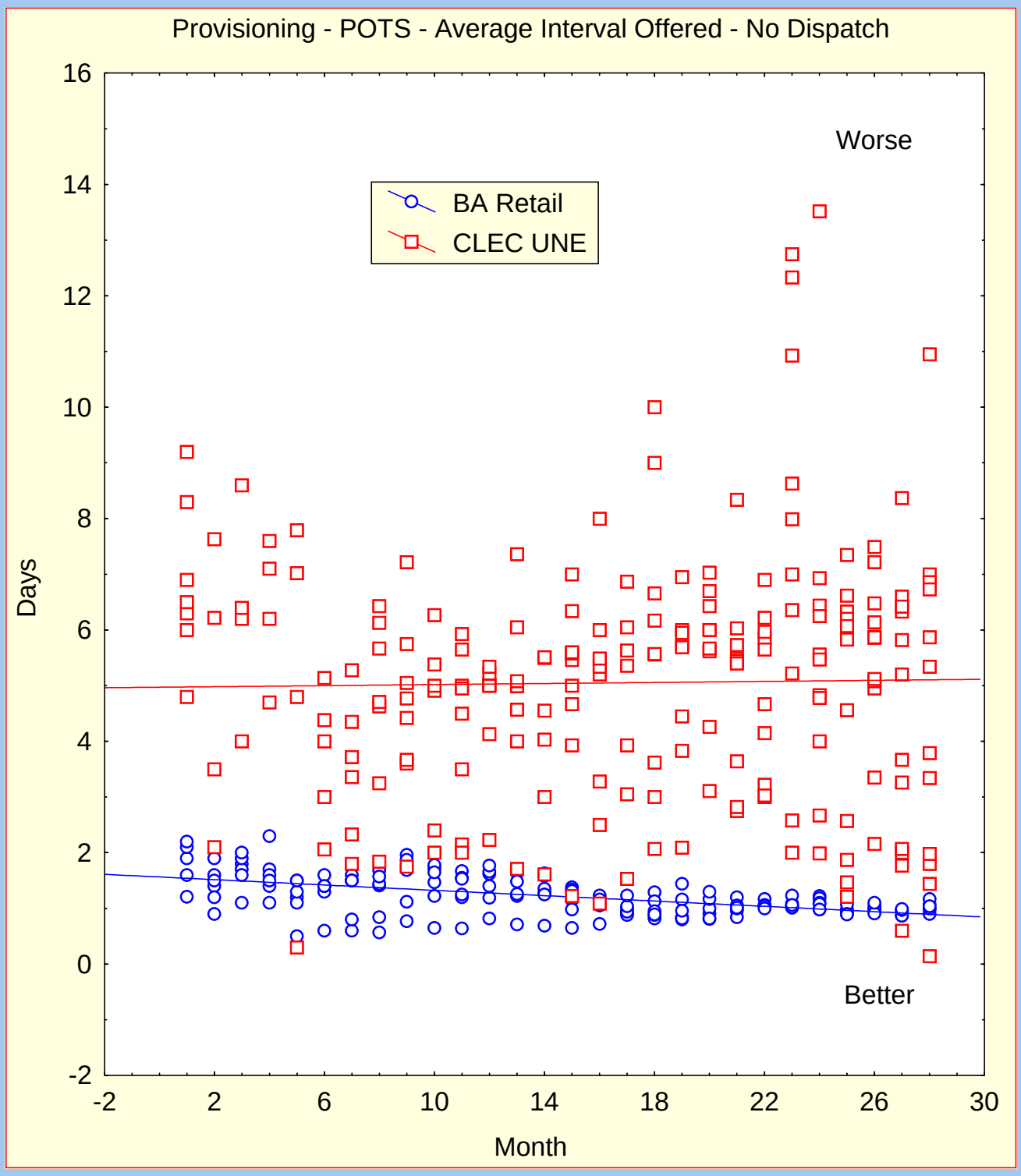

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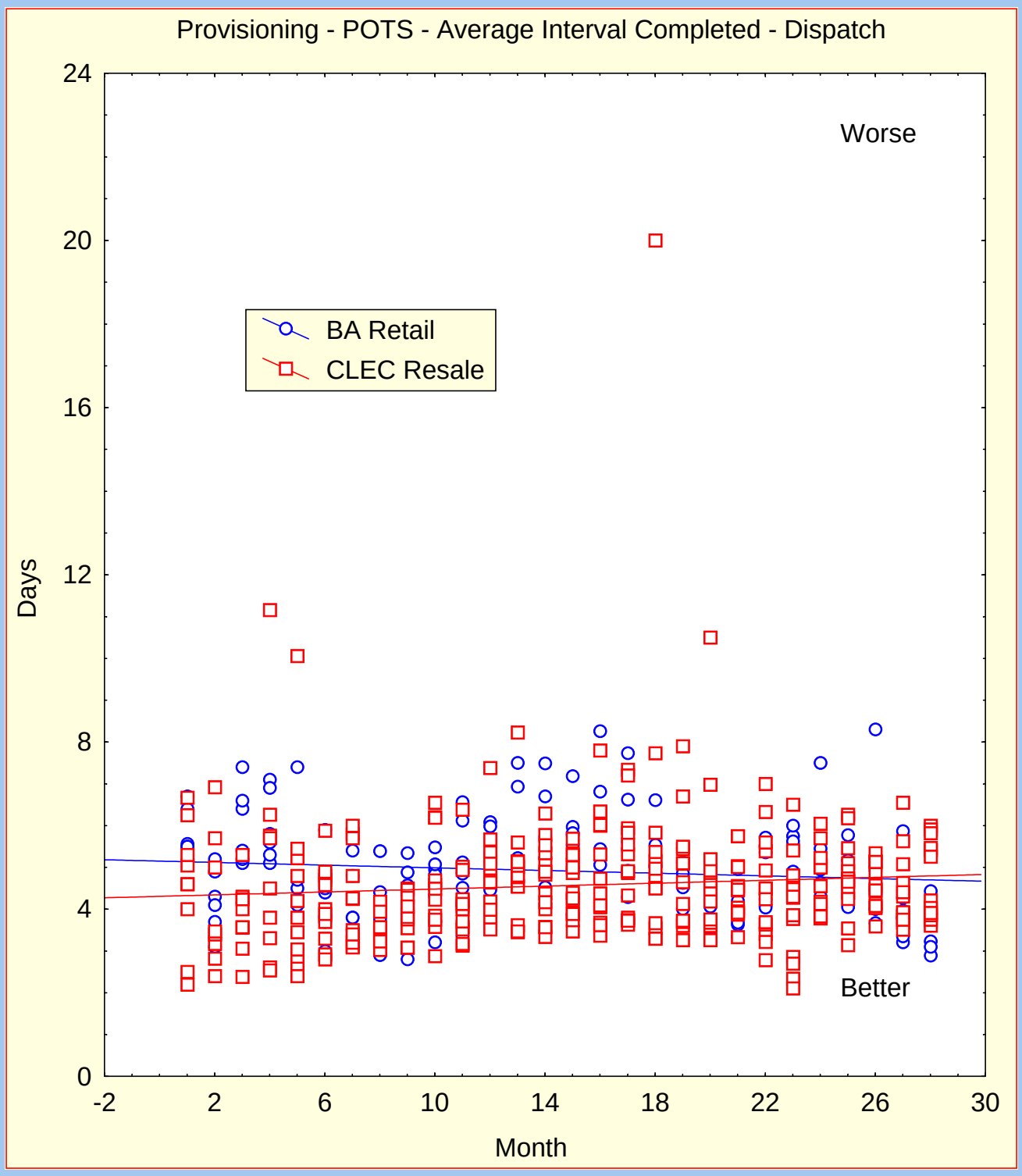

Public data from BA/NYNEX Merger filings

Bell Atlantic Performance Monitoring Reports

28 months (9/97 through 12/99) for 14 states

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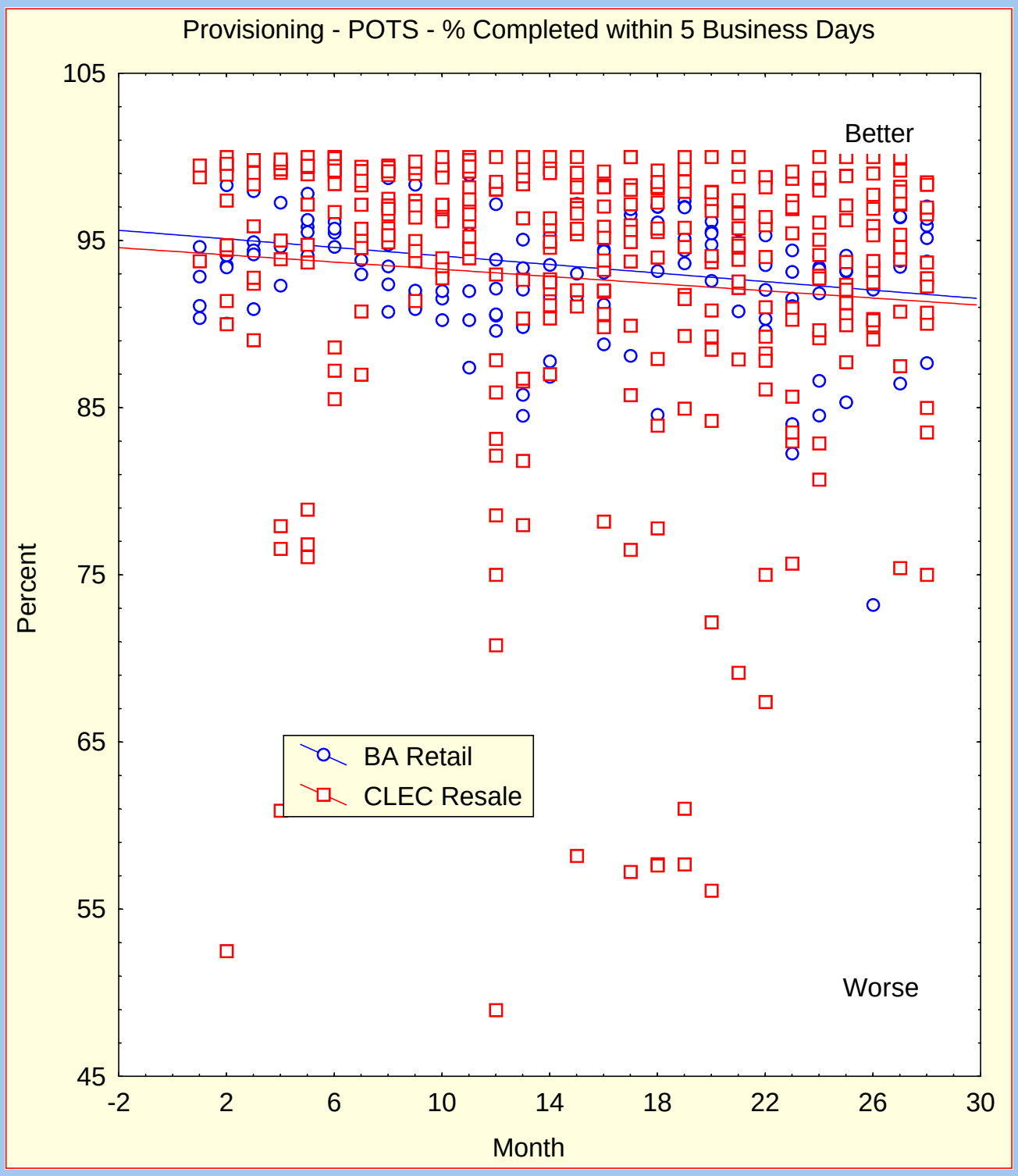

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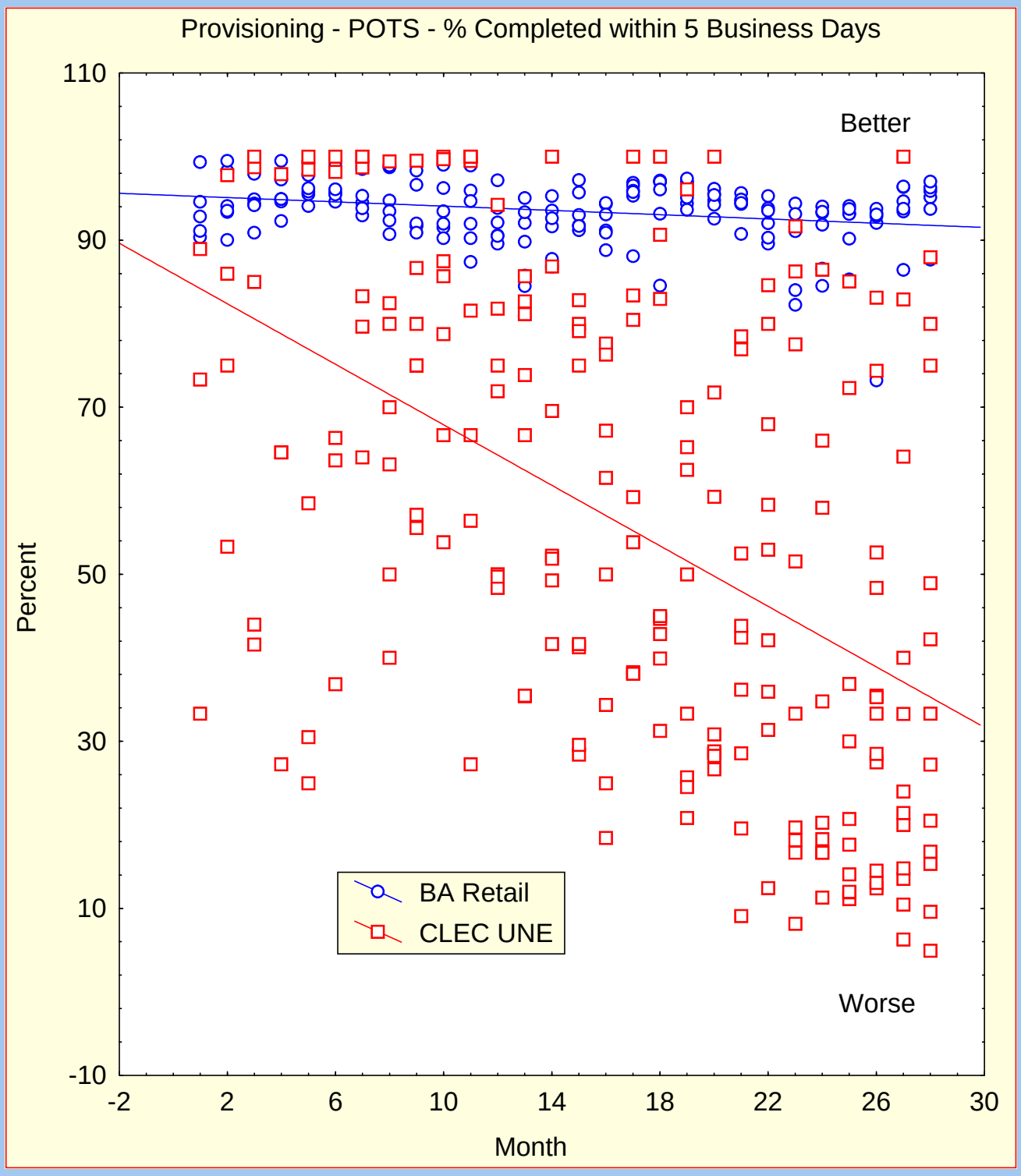

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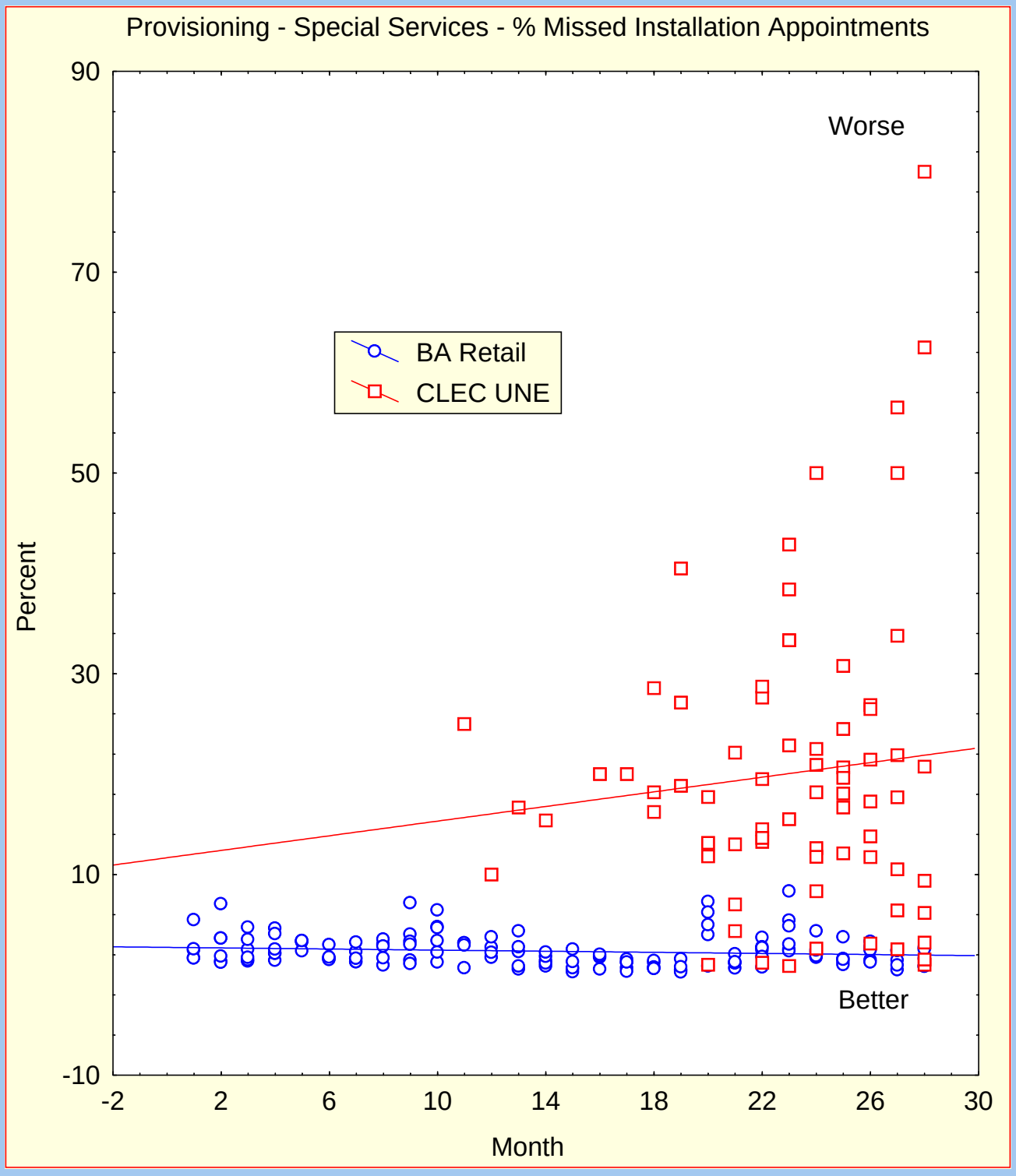

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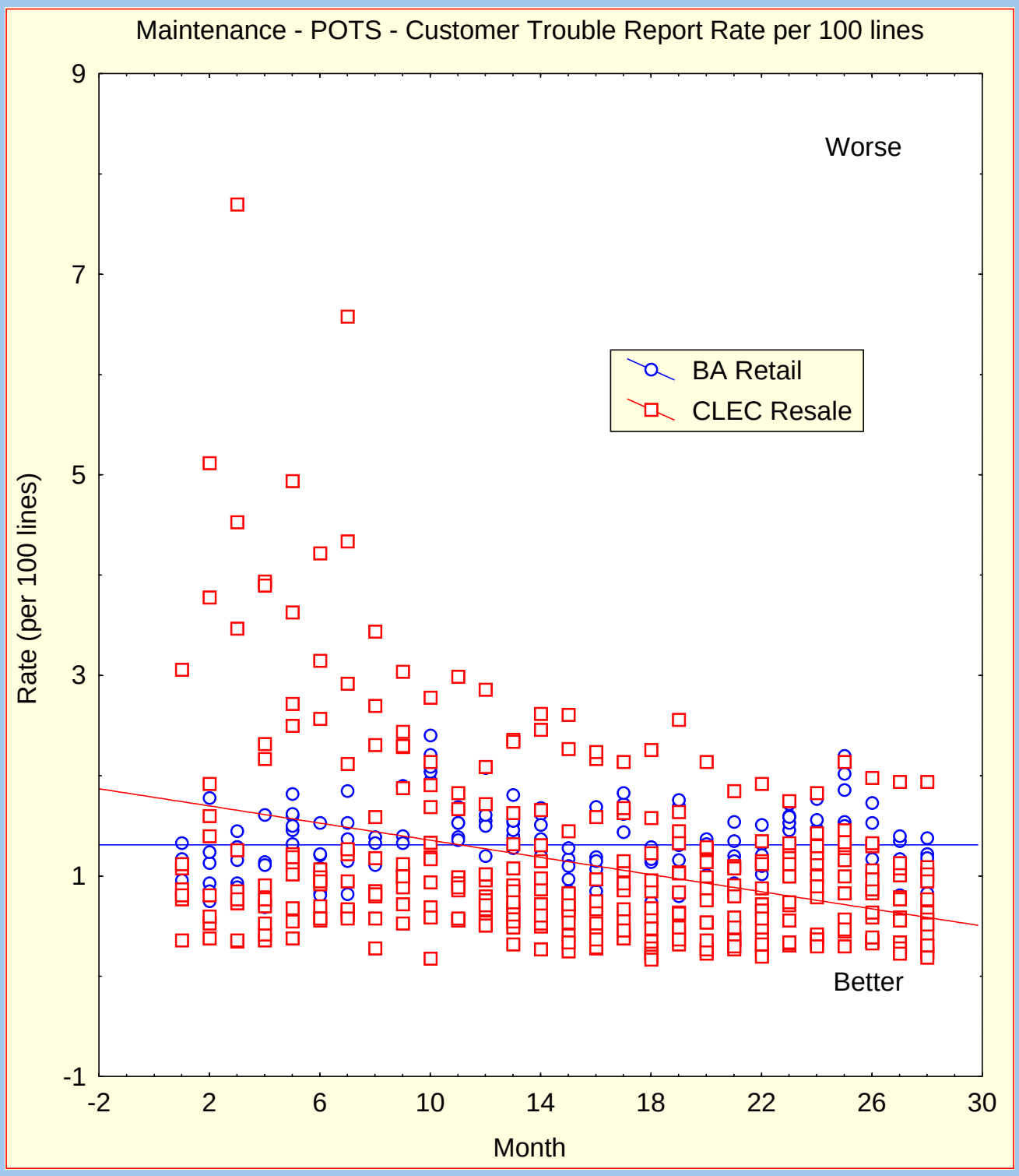

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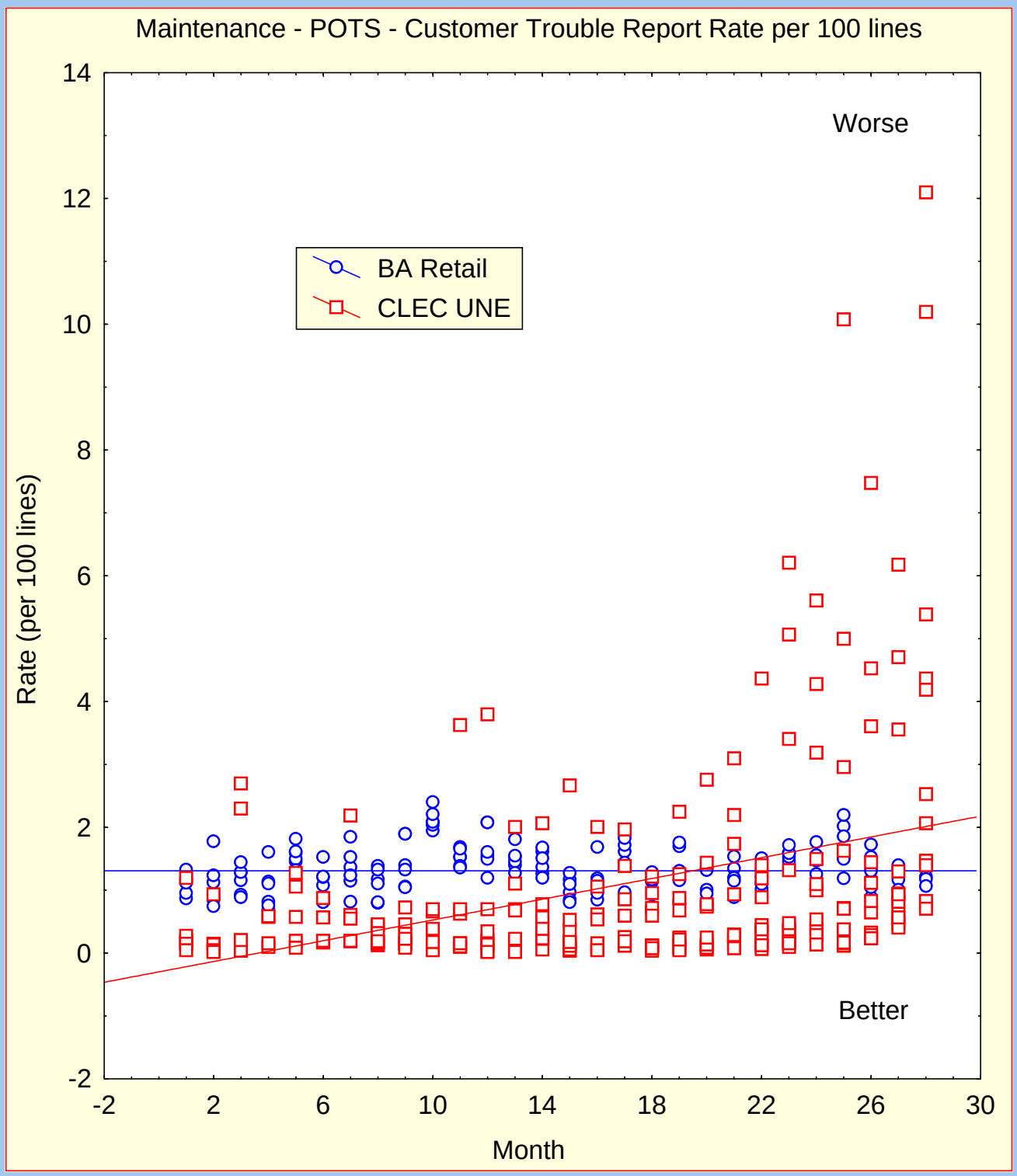

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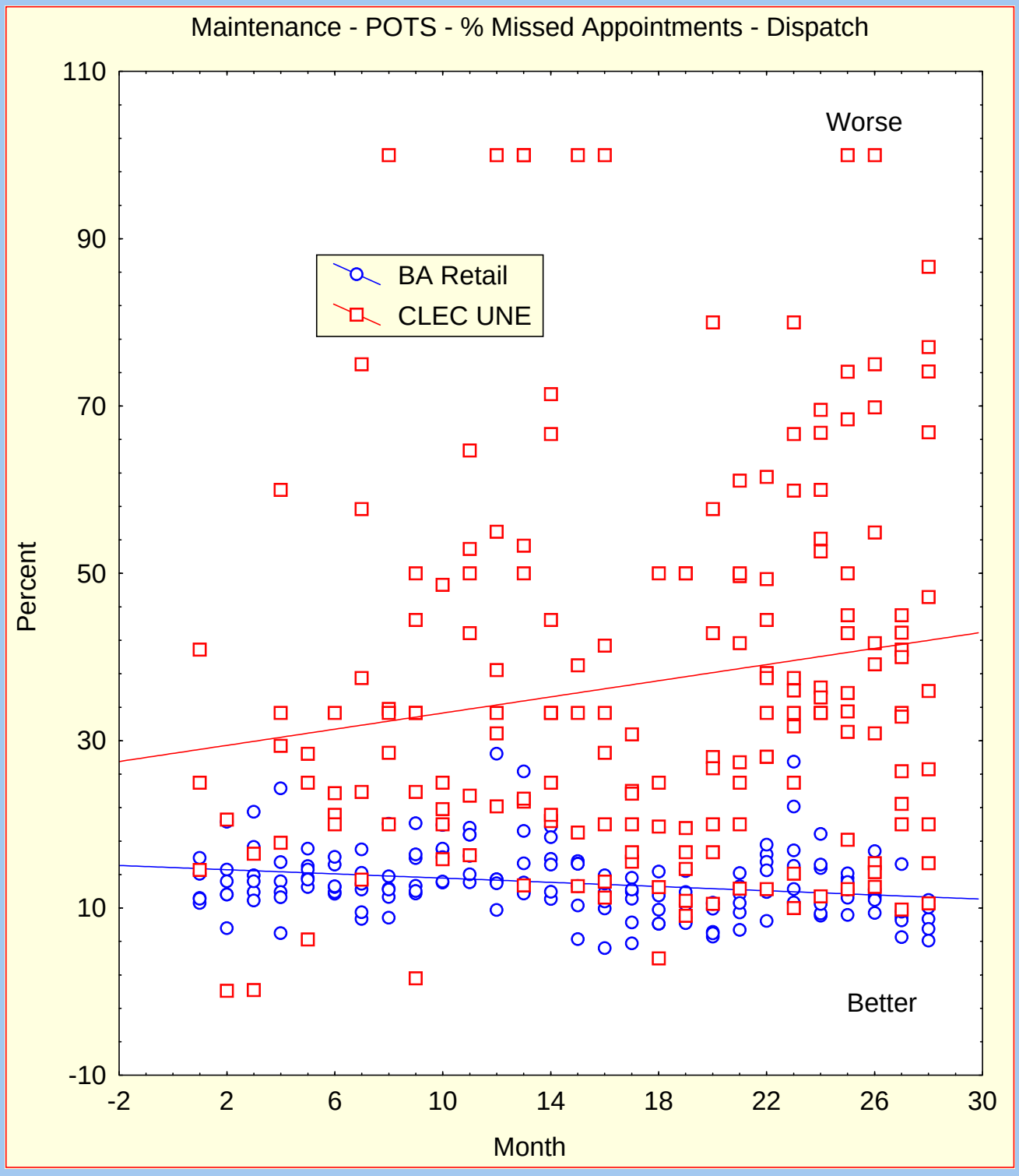

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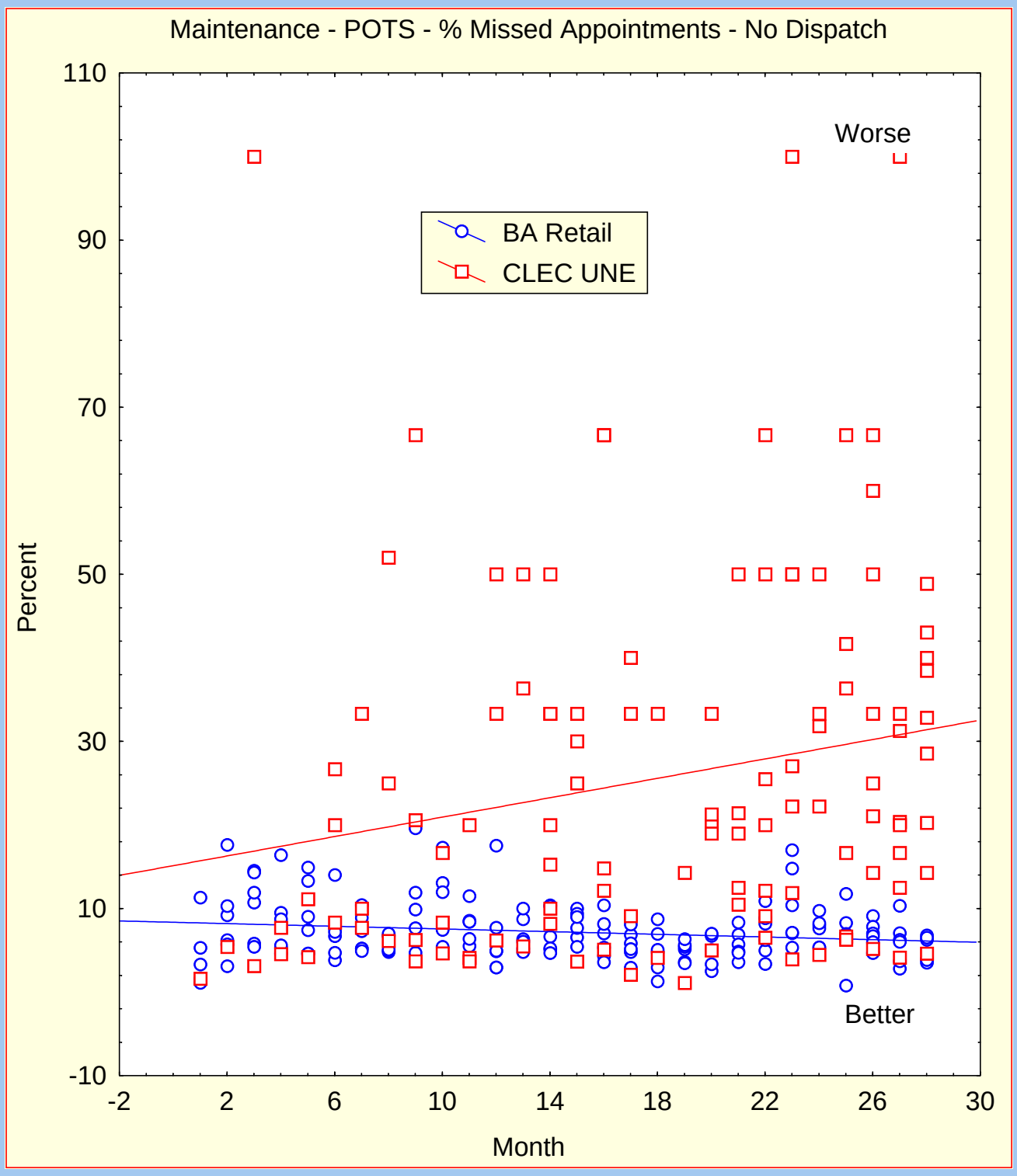

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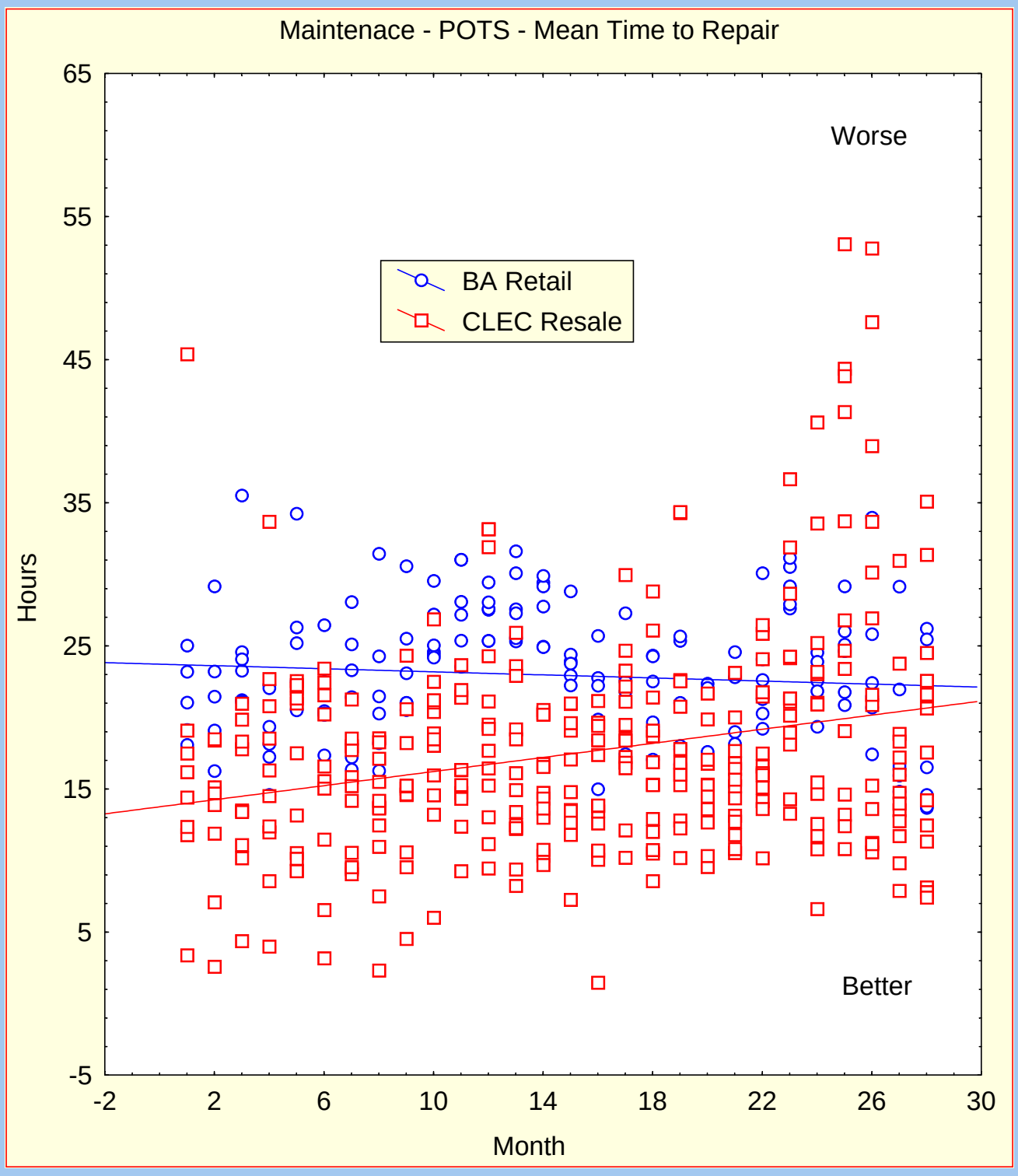

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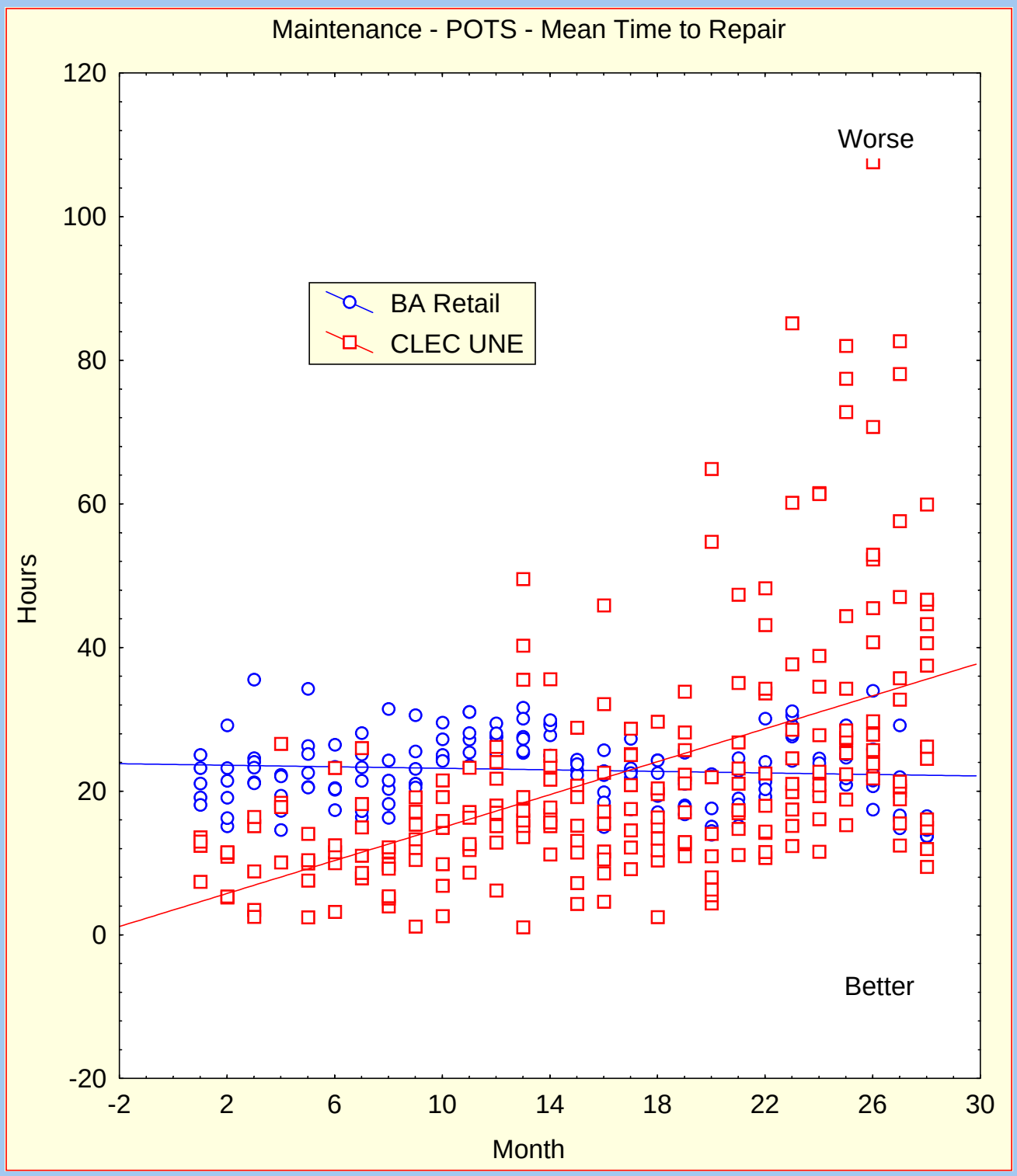

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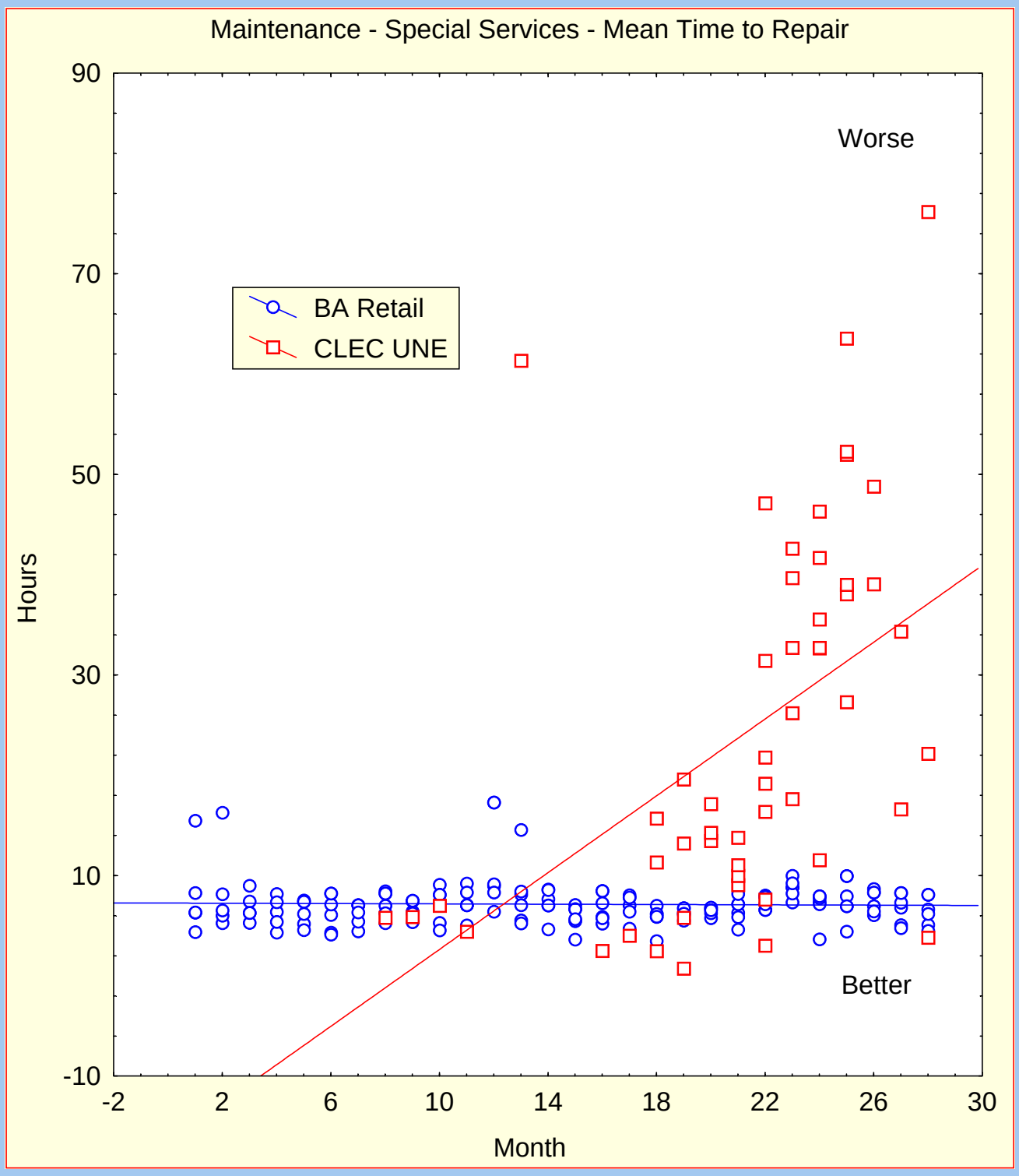

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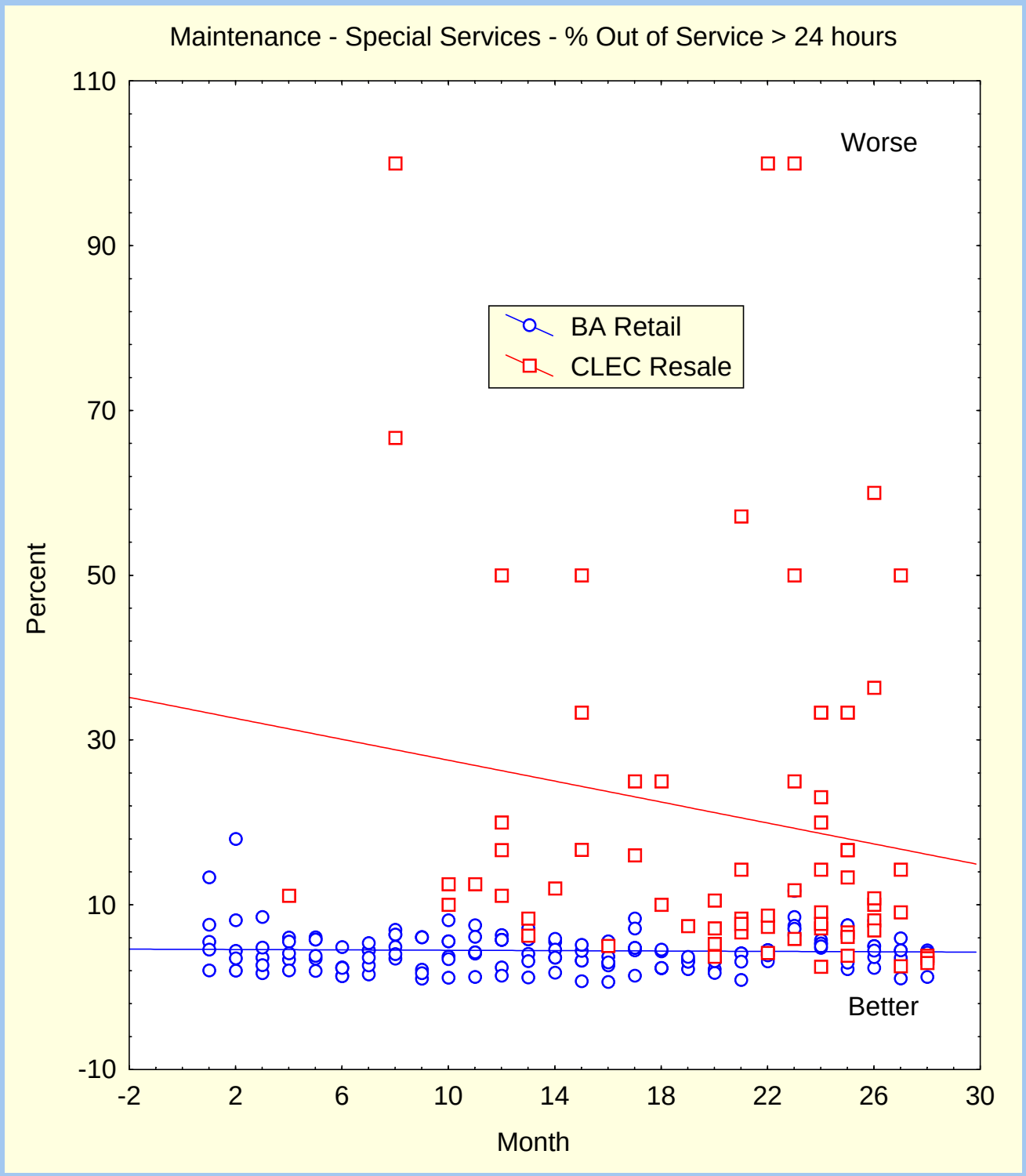

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